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In the Supreme Court of the United States

OCTOBER TERM, 1966

W. WILLARD WIRTZ, SECRETARY OF LABOR, PETITIONER

v.

LOCAL UNION NO. 125, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

THURGOOD MARSHALL,
Solicitor General,
BAREFOOT SANDERS,
Assistant Attorney General,
NATHAN LEWIN,
Assistant to the Solicitor General,
ALAN S. ROSENTHAL,
ROBERT V. ZENER,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

CHARLES DONAHUE,
Solicitor,
EDWARD D. FRIEDMAN,
Deputy Solicitor,
JAMES R. BEAIRD,
Associate Solicitor,
Department of Labor,
Washington, D.C. 20210.

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LOCAL UNION NO. 125, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL–CIO

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The Solicitor General, on behalf of the Secretary of Labor, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The order of the court of appeals (Appendix A, pp. 9–10, *infra*) is unreported. The opinion of the district court striking portions of the complaint (Appendix B, pp. 11–22, *infra*) is reported at 231 F. Supp. 590. The opinion of the district court on the Secretary's motion for summary judgment (Appendix C, pp. 23–42, *infra*) is unreported.

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JURISDICTION

The judgment of the court of appeals was entered on December 15, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether an action by the Secretary of Labor challenging a union election under Title IV of the Labor-Management Reporting and Disclosure Act of 1959 is rendered moot if a subsequent election is held by the defendant union.

2. Whether the Secretary's power to institute an action to invalidate a union election is limited to the particular allegation made by a complaining union member and to the particular contest challenged by the complainant.

STATUTE INVOLVED

The relevant provisions of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. 401 *et seq.*, are set forth in Appendix F to our petition for a writ of certiorari in *Wirtz* v. *Local 153, Glass Bottle Blowers Association,* filed today.

STATEMENT

Respondent union held a general election of officers on June 8, 1963, and that election resulted in a tie vote for the office of Business Representative. A run-off election for the post was held on July 13, 1963. Within one month after the run-off election, the losing candidate protested the conduct of the election to the union, and his protest was denied on December 2, 1963. On December 9, 1963, the candidate filed a complaint with the Secretary of Labor alleging that the run-off

election for Business Representative had been conducted in violation of the union's constitution and by-laws (pp. 11–12, *infra*).

After conducting an investigation, the Secretary instituted this action on February 7, 1964, seeking an order declaring the 1963 general and run-off elections invalid. The complaint alleged that under the union's constitution only members who had paid the *per capita* tax to the international union—which was forwarded through the offices of the local—were eligible to vote and run for office, but that the union's secretary-treasurer had followed the practice of forwarding to the international union the *per capita* tax of certain select members who had fallen behind on their local dues. In this manner, it was alleged, the local's treasury was being used to assure the eligibility of between 50 and 75 union members, while aproximately 500 others who had been delinquent in paying their local dues were declared ineligible.

On the union's motion, the district court on July 13, 1964, struck those portions of the complaint that were directed to the election of officers other than Business Representative on the ground that no complaint by any union member had challenged the general election of June 1963 (pp. 11–22, *infra*). Thereafter, in April 1966, the district court granted the Secretary's motion for summary judgment and directed a supervised election for the office of business representative (pp. 23–42, *infra*). The Secretary appealed from the order limiting relief to the office of Business Representative.

On June 11, 1966, the union held its next regular election and, at the same time, a supervised election

for the office of Business Representative was conducted. The court of appeals thereupon dismissed the Secretary's appeal as moot, relying on the similar decision of the Court of Appeals for the Second Circuit in *Wirtz* v. *Local Unions 410, 410A, 410B & 410C International Union of Operating Engineers,* 366 F. 2d 438 (pp. 9–10, *infra*).

REASONS FOR GRANTING THE WRIT

1. The first question presented in this case is similar to the question presented in *Wirtz* v. *Local 153, Glass Bottle Blowers Association,* in which we are today filing a petition for a writ of certiorari. The facts here are distinguishable from those in the *Glass Bottle Blowers* case, however, in that the intervening election—which, in the view of the court below, rendered the case moot—may not have been tainted by the same violation as the Secretary alleged to have occurred in the 1963 election. In this case, unlike the *Glass Bottle Blowers* case, there is no evidence in the record as to whether the violation continued to 1966 and whether it affected the unsupervised portion of the 1966 election.[1] For the reasons stated in our peti-

[1] The Department of Labor advises us that its representatives who supervised the election for Business Representative were not in a position to determine whether ineligible members either ran for office or voted at the election for the other offices. Although the supervised and unsupervised elections took place at the same time and in the same hall, separate ballots and separate ballot boxes were used, and there were two separate lines of voters. Thus, so far as the Department knows, persons ruled ineligible to vote at the supervised election could have voted at the unsupervised election, and persons ineligible to run at the supervised election could have run at the unsupervised election.

tion in the *Glass Bottle Blowers* case, we believe that the court below erred in concluding that the action was moot and that its error does substantial harm to the remedial scheme established by Congress. It makes no difference, we believe, whether the intervening regular union election is itself subject to challenge or not. The statute contemplates that if the Secretary can prove the invalidity of the initial contested election, he may demand a supervised election as the only realistic means of overcoming the harm previously done.

2. The second question presented in this case is similar to the question presented in *Wirtz* v. *Local Unions Nos. 9, 9–A, and 9–B, International Union of Operating Engineers*, in which we are also today filing a petition for a writ of certiorari. It is unlike the *Operating Engineers* case, however, in that the unchallenged races which the Secretary sought to invalidate here were conducted at a different time from the race specified in the member's complaint. That did not, we believe, make it a separate "election" for purposes of the statute because, in substance, both votes were part of one process designed to select union officers for the following three years.

For the reasons stated in our petition in the *Operating Engineers* case, we believe that the district court improperly narrowed the Secretary's remedial powers by confining his authority to sue to the race challenged by the union member. The Secretary's investigation of the union's 1963 election disclosed that 16 of the 27 candidates in that election (including four who were elected) would have been ineligi-

ble if the requirements of the union's constitution and bylaws had been uniformly applied, and that 49 of the 311 voters would have been disqualified from voting. (Three contests were decided by less than 49 votes.) It is not consistent with the purpose of the Act, we submit, for these violations to be immune from challenge by the Secretary even though the union has rejected a member's protest alleging related violations and has thereby refused to set its own house in order.

3. The decision below, like those in the related cases in which we are simultaneously filing petitions for writ of certiorari, narrowly construe the powers assigned to the Secretary of Labor by Title IV of the Labor-Management Reporting and Disclosure Act. Such a grudging approach is, we believe, contrary to the plain intent of Congress, which, as this Court observed in *Calhoon* v. *Harvey*, 379 U.S. 134, 140, "decided to utilize the special knowledge and discretion of the Secretary of Labor in order best to serve the public interest." We urge this Court to grant our petitions for certiorari in these three cases to consider, in varying factual contexts, the scope of the Secretary's power to enforce the rights guaranteed by the Act.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General,
BAREFOOT SANDERS,
Assistant Attorney General,
NATHAN LEWIN,
Assistant to the Solicitor General.
ALAN S. ROSENTHAL,
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